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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

**J. BUCKNER FISHER, Receiver of the
First National Bank of Chattanooga,
Tennessee,**

vs.

**LOUISE WHITON, Executrix of the
Estate of ANNIE R. NOTTINGHAM,
Deceased, et al.**

No. 85.

**SUPPLEMENTARY REPLY BRIEF OF
RESPONDENTS.**

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Attorney for Creditors, of Counsel.

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To the Honorable, The Chief Justice and the Associate
Justices of The Supreme Court of The United States:

This cause was heretofore before this Court upon Petition
for Certiorari to the Tennessee Court of Appeals, and the
writ was denied; but, upon Petition to Rehear, filed by the
petitioning Receiver, together with the brief filed by the
Comptroller as Amicus Curiae, this Court reconsidered and
granted the writ.

The facts stated in the petition for the writ filed by the Receiver were admitted to be substantially correct, so that the only questions arising are those previously presented in respondents' brief, page 2.

The Tennessee Courts have considered, construed and applied the general law of the State as well as the Statutes found as Sections 8225 and 8604 of the Code of Tennessee of 1932. In view of the various holdings of the Federal Courts to the effect that the decisions of the highest Court of a State as to the construction to be placed on the common law or its statutes will not be disturbed, there is no Federal question involved. There is only involved the question as to when the cause of action accrued under the laws of the State of Tennessee. The Courts of this State should be permitted to construe its law and finally determine that question for themselves.

It is provided by Federal Statute, and held by numerous decisions of this and lower Federal Courts, that unless a Federal Statute, a Federal constitutional question, or one involving the treaties with nations, is involved, the holdings of the highest State Court are binding on the Federal Courts.

R. S., Sec. 721 (28 U. S. C. A. 725);
Pufahl v. Parks, 299 U. S. 217;
McDonald v. Thompson, 184 U. S. 71-72;
McClaine v. Rankin, 197 U. S. 154;
Morgan v. Hamlet, 113 U. S. 449;
Coffey v. Fisher, 100 Fed. (2) 51.

It is said in *Erie R. Co. v. Tompkins*, 304 U. S. 64-92:

"And whether the law of the State shall be declared by its Legislature in a Statute or by its highest court in a decision is not a matter of federal concern."

In the comparatively recent case of *Wichter v. Pizzutti*, 276 U. S. 27, the Court said:

"While this Court has power to construe the statute, it is not obliged to do so. We have often recognized the propriety of remanding a case to a State Court for the determination of a delicate question of State Law."

This case cites the following:

Gulf, Colorado & Santa Fe Ry. Co. v. Dennis, 224 U. S. 503;

Dorchy v. Kansas, 264 U. S. 286;

Missouri ex rel. Wabash Ry. Co. v. Public Service Commission, 273 U. S. 126;

Cobb Brick Co. v. Lindsay, 275 U. S. 491.

The cases cited by counsel for petitioner are not determinative, and, other than *Strasburg v. Schram*, 93 Fed. (2d) 246, are not even analogous to the matter presented.

In the case of *Strasburger v. Schram*, opinion by Federal District Court, relied upon by the Receiver and Comptroller, the speedy closing of a decedent's estate was not involved. The extensions were from June 23 to July 20, 1933, and from the 20th to July 31, 1933, involving little more than a month. No indefinite and lengthy extensions were involved in that case. The most that the Court held was that these were reasonable extensions, and that as there seemed to be no authorities to the contrary, that the Comptroller would be allowed the power to grant them. No statute, such as Tennessee Code 8604, was involved.

In *Coffey v. Fisher*, 100 Fed. 51, the United States Circuit Court of Appeals had under consideration both the Tennessee statutes referred to, the indefinite extensions during which time an action could be brought, also the necessity for the speedy winding up of a decedent estate was considered.

The decision of this Court in *Korbly, Rec., v. Springfield Institution*, 245 U. S. 330, relied upon by counsel for appellants, has no reflection upon the issues now presented. That case merely decided the question of whether the Comptroller had the right to withdraw an assessment and reassess. **No statute of limitation was considered.** An application of that case to the matters herein would conflict with the decision in *Rawlings v. Ray*, *supra*, and *Pufahl v. Parks*, *supra*, and the other cases cited by respondents where the statutes of limitation were considered.

The case of *Bushnell v. Leland*, 164 U. S. 684, cited in *Korbly v. Springfield Institutions* (*supra*), merely challenged the Comptroller's right to make an assessment without a court order. **No statute of limitation was involved.**

The case of *Bowden v. Johnson*, 107 U. S. 251, cited by this Court in the *Korbly* case, merely adjudicated the Receiver's right to collect an assessment from a stockholder who sold his stock to an insolvent in order to escape the assessment. **No statute of limitation was involved.**

The case of *U. S. v. Knox*, 102 U. S. 422, cited in the *Korbly* case, held that where the Comptroller made an assessment of 70 per cent, sufficient to pay the debts of the insolvent bank, and could not collect from the insolvents and nonresidents, he did not have the right to reassess those who were solvent and paid the first assessment levied. **No statute of limitation was involved.** This case may be interesting as showing limited authority on the part of the Comptroller, and a limitation upon a stockholder's liability, but has no application to the matters in question here.

The case of *Stuebaker v. Perry*, 184 U. S. 258, cited in the *Korbly* case, presented the single question—could the Comptroller make more than one assessment? **No statute of limitation was involved.**

So that the predicate for the conclusions manifested in the Korbly v. Springfield Institution case, so strongly relied upon by counsel for the Comptroller, being decisive of an entirely different matter from the questions presented here, furnishes no analogy toward a proper decision in the present case.

Respectfully submitted,

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